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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/976,471	10/11/2001	James L. Jason JR.	10559-504001 / P11796	9923
20985	7590	03/23/2006	EXAMINER	
FISH & RICHARDSON, PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			TIV, BACKHEAN	
			ART UNIT	PAPER NUMBER
			2151	
DATE MAILED: 03/23/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/976,471	Applicant(s) JASON ET AL.	
	Examiner Backhean Tiv	Art Unit 2151	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14, 17-24 and 27-34 is/are pending in the application.
- 4a) Of the above claim(s) 15, 16, 25 and 26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14, 17-24 and 27-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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Detailed Action

Claims 1-14, 17-24, 27-34 are pending in this application. Claims 15, 16, 25, 26 have been cancelled. This is a response to the Amendment/Remark filed on 1/6/06.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 34 is not limited to tangible embodiments. In view of Applicant's disclosure, the medium is not limited to tangible embodiments and intangible embodiments. As such, the claim is not limited to statutory subject matter and is therefore non-statutory.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 34 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As per claim 34, is not a proper dependant claim because it is a claim that is broader than claim 33. It does not include all the limitation of claim 33 as defined in 37 CFR 1.75(c).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-14, 17-24, 27-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,779,021 issued to Bates et al. (Bates) in further view of US Publication 2002/0035683 issued to Kaashoek in further view of US Patent 6,662,230 issued to Eichstaedt et al. (Eichstaedt).

As per claim 1, 12, 20, 24, 31, 33 Bates teaches a method comprising: generating information, at a point in the network, about unwanted communications passing through the point from a source and directed to a target device (col. 6, line 1-40); monitoring communications passing through at least a point on a path from a source sub-network to a target device (col. 6, lines 1-40, Figs. 1-7).

Bates however does not explicitly teach analyzing the information generated to identify the points that first carried the unwanted communications; blocking communications passing through the first network to the second network.

Kaashoek explicitly teaches analyzing the information generated to identify the points that first carried the unwanted communications; blocking communications passing through the first network to the second network (paragraph 0025-0030, 0041; Kaashoek teaches that the location of the attackers can be determined).

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Therefore it would have been obvious to one ordinary skill in the art at the time of the invention to modify the teachings of Bates to also analyzing the information generated to identify the points that first carried the unwanted communications and blocking communications passing through the first network to the second network as taught by Kaashoek to deny attackers of a network to send large volumes of malicious traffic to a user(Kaashoek, paragraph 0003).

One ordinary skill in the art at the time of the invention would have been motivated to combine the teachings of Bates and Kaashoek to provide a system to deny attackers of a network to send large volumes of malicious traffic to a user(Kaashoek, paragraph 0003).

Bates in view of Kaashoek however does not explicitly teach the unwanted communications being adapted to reduce the ability of the target device to respond to other communications.

Eichstaedt teaches the unwanted communications being adapted to reduce the ability of the target device to respond to other communications(Abstract, Fig.1, col.5, lines 39-42, col.6, lines 21-35).

Therefore it would have been obvious to one ordinary skill in the art at the time of the invention to modify the teachings of Bates in view of Kaashoek to teach the unwanted communications being adapted to reduce the ability of the target device to respond to other communications as taught by Eichstaedt in order to deny requests by clients whose request significantly reduce server performance(Eichstaedt, col.1, lines 5-15).

One ordinary skill in the art at the time of the invention would have been motivated to combine the teachings of Bates, Kaashoek, and Eichstaedt in order to provide a system to deny requests by clients whose request significantly reduce server performance(Eichstaedt, col.1, lines 5-15).

As per claim 2, the method of claim 1, also including detecting the direction of the unwanted communications(Bates, col.6, lines 1-40, Kaashoek, paragraph 0025-0030, Eichstaedt, col.3, line 41-59). Motivation to combine set forth in claim 1.

As per claim 3, the method of claim 1, also including identifying the target device(Bates, col.6, lines 1-40, Kaashoek, paragraph 0025-0030, Eichstaedt, col.3, line 41-59). Motivation to combine set forth in claim 1.

As per claim 4, 17,18,27 also including statistically analyzing the communications to determine if an uncharacteristically large number of communications have passed through at least one of the network points(Eichstaedt, col.3, line 60-col.4, line 18). Motivation to combine set forth in claim 1.

As per claim 5,22,30, also including statistically analyzing the communications to determine when an uncharacteristically large number of communications have been targeted toward the target device(Bates, col.6, lines 1-40, Kaashoek, paragraph 0025-0030, Eichstaedt, col.3, line 60-col.4, line 18). Motivation to combine set forth in claim 1.

As per claim 6, 19 also including correlating communications request messages with acknowledgement messages(Eichstaedt, col.11, lines 10-13).

As per claim 7, the method of claim 1, also including communicating information about the unwanted communications to brokers(Bates, col.6, lines 1-40, Kaashoek,

paragraph 0025-0030, Abstract, Eichstaedt, Abstract). Motivation to combine set forth in claim 1.

As per claim 8, the method of claim 7, also including communicating information about the unwanted communications among brokers(Bates, col.6, lines 1-40, Kaashoek, paragraph 0025-0030, Abstract, Eichstaedt, Abstract). Motivation to combine set forth in claim 1.

As per claim 9,13,23,28,29 also including blocking a portion of communications passing through the point through which the unwanted communications originated(Bates, col.6, lines 1-40, Kaashoek, paragraph 0025-0030, Eichstaedt, col.3, line 41-col.4, line 67). Motivation to combine set forth in claim 1.

As per claim 10, 14 also including blocking a portion of communication request messages passing through the point through which the unwanted communications originated(Bates, col.6, lines 1-40, Kaashoek, paragraph 0025-0030, Eichstaedt, col.3, line 41-col.4, line 67).

As per claim 11, the method of claim 1, in which the target device comprises a web server(Eichstaedt, col.3, line 41-col.4, line 67). Motivation to combine set forth in claim 1.

As per claim 21, in which the communications analyzer also includes:
an interface monitor corresponding to each interface device; and
a communications link between the interface monitors(Eichstaedt, col.3, line 39-col.4, line 67). Motivation to combine set forth in claim 1.

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As per claim 32, 34 also capable of configuring a computer to block a portion of the communications passing through the point that first carried the unwanted communications(Bates, col.6, lines 1-40, Kaashoek, paragraph 0025-0030, Eichstaedt, col.3, line 41-col.4, line 18). Motivation to combine set forth in claim 1.

Response to Arguments

Applicant's arguments with respect to claims 1-14, 17-24,27-34 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Backhean Tiv whose telephone number is (571)272-3941. The examiner can normally be reached on 9 A.M.-12 P.M. and 1 -6 P.M. Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung can be reached on (571) 272-3939. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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2151
3/18/06



ZARNI MAUNG
SENIOR PATENT EXAMINER